

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 16 OF 2004.

S T A T E,
through Public Prosecutor,
High Court of Bombay at
Panaji, Goa. ... Applicant.

VERSUS

Mr. Estaquio Leonard
Agenlo Misquita,
r/o Karasvado,
Mapusa, Goa. ... Respondent.

Shri S.N. Sardessai, Public Prosecutor for the State/
Applicant.

Shri S.D. Lotlikar, Senior Advocate with Ms. S. Naik,
Advocate for the Respondent.

CORAM: N.A. BRITTO, J.

DATE: 10TH JUNE, 2004.

ORAL ORDER:

The State is before this Court under Section 377(1) of the Code of Criminal Procedure, 1973 complaining about the inadequacy of the sentence imposed against the respondent/accused by the learned Ist Additional Sessions Judge, Panaji in Sessions Case No. 33/99.

2. The said accused has been convicted and sentenced by the learned Addl. Sessions Judge, Panaji under Section 307 of the Indian Penal code

to undergo rigorous imprisonment for a period of one year and also to pay a fine of Rs.5000/- in default to undergo simple imprisonment for a further period of two months and under section 27 of the Arms Act, 1959 to undergo imprisonment for one year and also to pay a fine of Rs.1000/- in default to undergo simple imprisonment for a further period of one month. Both the sentences have been ordered to run concurrently. The set off has also been given to the said accused from 28.10.96 to 31.10.96.

3. Shri Sardessai, learned Public Prosecutor submits that in the present case the accused fired three shots with his revolver and then had gone to the Police Station and lodged a false complaint stating that his pistol was missing. Referring to Section 307 of I.P.C. Shri Sardessai submits that an offence under section 307 I.P.C. is punishable with imprisonment which could extend to ten years and fine and consequently considering the nature of the crime committed by the accused and the sentence imposed on the accused by the learned Addl. Sessions Judge, the sentence ought to be on the higher side.

4. On the other hand, Shri Lotlikar, learned

Senior Counsel submits that the sentence imposed has been imposed by the learned Addl. Sessions Judge in his discretion. Shri Lotlikar has further submitted that in imposing the said sentence the learned Addl. Sessions Judge has discussed all the factors in para 49 of the impugned judgment. Shri Lotlikar has further submitted that this court would interfere in the sentence imposed by a trial court only in case it is shown to be grossly inadequate or it is less than the minimum prescribed in case there is a minimum sentence to be imposed in a given case. Shri Lotlikar has placed reliance in the case reported in 1998 Bom.C.R. (Cri) 41.

5. A sentence is a debt which a criminal is required to pay to the Society at large. A Sentencing is always a difficult task. While sentencing, the court is required not only to look at the crime committed by the accused and the attending circumstances, but also the victim, the accused and the interest of the society at large. There has never been and there cannot be any cut and dry formula in imposing a sentence in a given case. I have perused the judgment of the learned Addl. Sessions Judge and particularly the aspects considered by the learned Addl. Sessions Judge

while imposing the sentence which have been mentioned by him in para 49 of his learned judgment. This is a case where there was some previous enmity, but it is a case where the accused in spite of having been a Customs Officer, fired the pistol from a range of 10 to 18 metres and the victim at whom the same was fired, did not suffer any injury. The learned Addl. Sessions Judge has also considered the age of the accused and the fact that he is serving in the Customs Department. Considering the totality of the facts of the case, in my opinion it cannot be said that the sentence imposed by the learned Addl. Sessions Judge is inadequate and far less grossly inadequate.

6. I am therefore of the opinion that there is no substance in this appeal. Hence I hereby dismiss the same.

N. A. BRITTO, J.

sl.